

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: CS/SB 198

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baker

SUBJECT: Retirement

DATE: April 20, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.	Wilson	Wilson	GO	<b>Fav/CS</b>
3.			WPSC	
4.				
5.				
6.				

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**I. Summary:**

This bill authorizes Special Risk Class members under the Florida Retirement System to purchase the increase in accrual value of upgraded retirement credits for past services at 3 percent of a member's average final compensation. The bill also adds emergency medical technician and paramedic service to the types of past service that are eligible to be purchased or upgraded as special risk service.

This bill substantially amends section 121.0515 of the Florida Statutes.

**II. Present Situation:**

**Florida Retirement System**

The Florida Retirement System (FRS) was established by the Legislature in 1970 to consolidate then-existing state administered retirement programs for state and county employees and officers, teachers, judges, and highway patrol officers.<sup>1</sup> Membership in the FRS is compulsory for all state and county employees that work in regularly established positions. Cities and special districts are also given the option to participate in the FRS.<sup>2</sup>

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<sup>1</sup> Section 121.051, F.S.

<sup>2</sup> Department of Management Services, *Senate Bill Analysis 198* at 1 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs) (stating that approximately 181 cities and 221 independent special districts in Florida have become members of the FRS as of June 30, 2009).

FRS membership is broken down into five different classes: Regular, Special Risk, Special Risk Administrative Support, Elected Officers, and Senior Management Service. The following table reflects the number of active FRS employees in 2009 by membership class:

Membership Class	Members
Regular Class	582,671
Special Risk Class	75,640
Special Risk Administrative Support Class	76
Senior Management Service Class	7,725
Elected Officer's Class	2,304

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The FRS is composed of two programs: The Defined Benefit Program (FRS Pension Plan) and the Defined Contribution Program (FRS Investment Plan), formally known as the Public Employee Optional Retirement Program (PEORP). The term ‘defined contribution’ for the FRS Investment Plan means that employer *contributions* are defined; whereas in the FRS Pension Plan, the *benefit* is defined.<sup>4</sup> Eligible new employees are automatically enrolled into the Pension Plan and are given five months to join the Investment Plan before they are defaulted into the Pension Plan. FRS employees are also given a one-time second election option during the course of their employment to change their retirement plan.

### Employer Contribution Rates

FRS employers are responsible for contributing a set percentage of their employee’s monthly compensation to the Division of Retirement to be distributed into the Florida Retirement System Contributions Clearing Trust Fund. The employer is required to make these contributions no later than the fifth working day of the month following the end of the payroll period.<sup>5</sup>

The employer contribution rate is a “blended contribution rate” set by statute that is the same percentage regardless of which plan their employee participates in. The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.<sup>6</sup> The current employer contribution rate for each membership class is:

<sup>3</sup> *Id.* at 2.

<sup>4</sup> MyFRS FRS INVESTMENT PLAN SUMMARY PLAN DESCRIPTION, (July 1, 2009) available online at [http://www.myfrs.com/imageserver/pdf/forms/frs\\_ip\\_spd.pdf](http://www.myfrs.com/imageserver/pdf/forms/frs_ip_spd.pdf) (last visited on Feb. 24, 2010) [emphasis added]

<sup>5</sup> Section 121.78, F.S.

<sup>6</sup> Section 112.63, F.S.

Membership Class	Effective July 1, 2009	Effective July 1, 2010
Regular Class	8.69 %	9.63 %
Special Risk Class	19.76 %	22.11 %
Special Risk Administrative Support Class	11.39 %	12.10 %
Elected Officer's Class <ul style="list-style-type: none"> <li>Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders</li> <li>Justices and Judges</li> <li>County Officers</li> </ul>	13.32 % 18.40 % 15.37 %	15.20 % 20.65 % 17.50 %
Senior Management Class	11.96 %	13.43 %

After employer contributions are placed into the FRS Contributions Clearing Trust Fund, benefits under the Investment Plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, and benefits under the Pension Plan are placed into the FRS Trust Fund.<sup>7</sup>

### Special Risk Class

As of January 30, 2009, the Florida Retirement System (FRS) Pension Plan had 75,640 active Special Risk Class Members.<sup>8</sup> The Special Risk Class includes employees who meet the eligibility requirements found in s. 121.0515, F.S., and who are employed by an FRS employer as a law enforcement officer, firefighter, correctional officer, correctional probation officer, emergency medical technician, paramedic, youth custody officer, or who are in a specified professional health care or forensic position and spend at least 75 percent of their time performing duties involving inmate contact for the Department of Corrections or patient contact for the Department of Children and Family Services.

The Special Risk Class was created for employees who must, as an essential function of the position, perform work that is physically demanding or arduous, or requires extraordinary agility and mental acuity. As persons in such positions age, they might not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their co-workers. Because of this, Special Risk Class members who are vested in the FRS receive more credit toward retirement for each year of service and are eligible to retire at an earlier age than Regular Class members.<sup>9</sup>

A Special Risk Class member is eligible for normal, unreduced benefits at the earlier attainment of age of 55, or 25 years of service, and earns retirement credits at 3 percent) for each year of service. A Regular Class member can retire at the earlier attainment of age 62, or 30 years of service, and earns retirement credits at 1.6-1.68 percent for each year of service.<sup>10</sup> The final

<sup>7</sup> See ss. 121.4503 and 121.72, F.S.

<sup>8</sup> Department of Management Services, *Senate Bill Analysis 198* at 2 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs).

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

pension benefit calculation for the retirement classes can be augmented, or “spiked” by the inclusion of up to 500 hours of annual leave.

### **Special Risk Credit for Past Service**

Section 121.021(18), F.S., defines “past service” for all FRS members to mean:

The number of years and complete months and any fractional part of a month, recognized and credited by an employer and approved by the administrator, during which the member was in the active employ of a governmental employer and for which the employee is not entitled to a benefit before his or her date of participation.<sup>11</sup>

Under current law, a Special Risk class member is allowed to purchase retirement credits in the Special Risk class based on his/her past service, and may upgrade those credits up to the amount of 2 percent of the member’s average monthly compensation.<sup>12</sup> Section 121.0515(5)(a), F.S., provides the following circumstances in which a member’s past service may be claimed as special risk service:

The member may purchase special risk credit for past service with a city or special district which has elected to join the Florida Retirement System, or with a participating agency to which a member’s governmental unit was transferred, merged, or consolidated as provided in s. 121.081(1)(f), F.S., if the member was employed with the city or special district at the time it commenced participating in the Florida Retirement System or with the governmental unit at the time of its transfer, merger, or consolidation with the participating agency.<sup>13</sup>

Law enforcement officers, firefighters, and correctional officers in the Special Risk class are also required to satisfy the criteria set forth in s. 121.0515(2), F.S., which requires the performance of certain duties and responsibilities.<sup>14</sup>

The cost to upgrade eligible past service to special risk service is calculated by subtracting the difference between the contributions made for past services and the special risk contribution rate, and multiplying that number by the salary earned during that time period, plus interest.<sup>15</sup>

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<sup>11</sup> Section 121.021(18), F.S.

<sup>12</sup> Section 121.0515(5), F.S.

<sup>13</sup> Section 121.0515(5)(a), F.S.

<sup>14</sup> *Id.* See also 121.0515(2)(a)-(j), F.S.

<sup>15</sup> Department of Management Services, *Senate Bill Analysis 198* at 4 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs) (stating that there is a 4 percent interest for past service prior to July 1, 1975, and 6.5 percent interest thereafter on any unpaid balance until the full amount is paid. The cost to purchase past service credit earned on or after January 1, 1975, is calculated using the special risk contribution rate in effect at the time the service was earned, multiplied by the annual salary, plus interest for any service earned prior to then.).

## **Actuarial Soundness and Minimum Funding Standards**

Article X, s. 14, of the State Constitution, requires public retirement benefits to be funded on a sound actuarial basis.

SECTION 14: State retirement systems benefit changes.- A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.<sup>16</sup>

The “Florida Protection of Public Employee Retirement Benefits Act” located in part VII, of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this Act is to “prohibit the use of any procedure, methodology, or assumptions, the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current tax payers.”<sup>17</sup>

### **III. Effect of Proposed Changes:**

This bill amends s. 121.0515, F.S., to increase the amount that a Special Risk Class member can purchase and upgrade retirement credits for past service in the Special Risk Class from 2 percent to 3 percent of the member’s average final compensation.

The bill retains the current calculation method to determine the costs for upgrading the first 2 percent of the member’s contributions for past service. The costs to upgrade special risk past service from 2 percent to 3 percent accrual value is the actuarial accrued liability (AAL) for the difference in the accrual value during the period of service being upgraded. The bill allows the member or the employer on behalf of the member, to pay the amount to upgrade special risk past service under the Florida Retirement System which must be immediately paid upon notification to the Division of Retirement.

The bill also allows past service as an emergency medical technician or paramedic with an employer that was a licensed advanced life support or basic life support provider to be eligible to be claimed as special risk service.

This bill shall take effect on July 1, 2010.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>16</sup> Art. X, section 14 of the Florida Constitution.

<sup>17</sup> Section 112.61, F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article X, s. 14, of the State Constitution, requires public retirement benefits to be funded on a sound actuarial basis.<sup>18</sup> Section 2 of this bill requires these benefits to be fair and adequate, and to be managed, administered, and funded in an actuarially sound manner in accordance to the constitution and Florida Statutes.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Special Risk FRS Class members will be able to purchase or upgrade past service to special risk service at 3 percent of his or her average final compensation for each year of service credit.

**C. Government Sector Impact:**

Since the bill provides for the employee or employer, on behalf of the employee, to pay the costs to purchase or upgrade past service to special risk service through the actuarial accrued liability, it should not require an increase in Special Risk Class contribution rates.<sup>19</sup>

The increase from 2 to 3 percent accrual value for special risk past service will have a budgetary impact on the Division of Retirement due to the costs associated in FRS calculations of actuarial accrued liabilities. The Division states that the cost for each calculation is \$400, regardless of whether the upgrade is purchased and that there are no limitations on the number of calculations that may be requested before retirement.<sup>20</sup>

**VI. Technical Deficiencies:**

None.

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<sup>18</sup> Art. X, section 14 of the Florida Constitution.

<sup>19</sup> Department of Management Services, *Senate Bill Analysis 198* at 5 and 7 (Jan. 28, 2010) (on file with the Senate Committee on Community Affairs).

<sup>20</sup> *Id.*

**VII. Related Issues:**

The Division of Retirement within the Department of Management Services has made the following comments in response to SB 198:

- The bill does not limit the periods of past service that can be upgraded to the special risk value. If the bill is not amended to limit the upgrade of past service to service on or after October 1, 1974, members that join the FRS through an agency join, merger, transfer, or consolidation could receive a higher accrual value for Special Risk class service earned between December 1, 1970, and September 30, 1974, than Special Risk Class members who were actively working at that time.
- The bill adds emergency medical technician and paramedic service to the types of past service eligible to be purchased or upgraded as special risk service; however, the bill does not make a cross-reference to s. 401.27, F.S., which provides the certification requirements of paramedics and emergency medical technicians. If the bill is not amended to provide this cross-reference it may be interpreted to mean that there are different statutory requirements for employees to obtain Special Risk Class membership and to claim past service as a special risk service.<sup>21</sup>

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability Committee on April 20, 2010:**

Provides that the employer shall pay the greater of \$400 or actual costs for the completion of an actuarial calculation that estimates the cost of each employee service credit upgrade, regardless of whether the service is purchased.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>21</sup> *Id.* at 7-8.